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June 15, 2015

Hon. Andrew J. Peck  
United States Magistrate Judge  
Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Courtroom 20D  
New York, New York 10007

Re: Rio Tinto plc v. Vale S.A., et al, Civil Action No. 14-cv-3042 (RMB) (AJP) (S.D.N.Y.)

Dear Judge Peck:

We write on behalf of Plaintiff Rio Tinto to request an order from the Court requiring Vale to *immediately* produce its predictive coding Training Set. The parties are now approximately two weeks away from the Court-ordered June 30 deadline for substantial completion of documents in response to the first requests for production. Despite our repeated requests, Vale has not provided its Training Set. Vale's failure to timely produce its Training Set potentially means that Vale will altogether blow the upcoming deadline, and that any production made will be devoid of some of the most important documents needed to begin depositions and other discovery in this case.

Once Vale produces its Training Set, Rio Tinto is entitled (per the parties' Predictive Coding Protocol) to 10 business days to review it. Even if Vale produced its Training Set today, that timeline puts the parties at June 29, just one day before the production deadline.<sup>1</sup> For weeks, Rio Tinto has asked (and asked again) that Vale turn over its Training Set in a timelier manner, yet Vale has refused. There is simply no reason and no time for Vale's ongoing delay in producing its Training Set. Rio Tinto produced its Training Set over a month ago and has since repeatedly conferred with Vale on the content and scope of Rio Tinto's training.<sup>2</sup> All Rio Tinto

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<sup>1</sup> Furthermore, to complete the training process, Vale will also be required to produce a Validation Set from its pool of nonresponsive documents. This step can only be taken once the parties reach an agreement on coding.

<sup>2</sup> The concerns Vale raised during those discussions about Rio Tinto's training of its system were baseless. Rio Tinto has shown that it has more than enough documents coded as responsive

asks is for Vale to demonstrate some modicum of reciprocity. Otherwise, Vale’s future production is bound to be deficient and prejudicial to Rio Tinto, as Vale’s production will be the product of an inadequate training process.<sup>3</sup>

Rio Tinto previously requested a definite production schedule for predictive coding disclosures, which Vale rejected and convinced the Court was unnecessary. *See* Dkt. 234 at 8–9, 17 (Apr. 6, 2015 Joint Letter). The result has put us where we are today. Exacerbating Rio Tinto’s concerns, Vale’s rolling productions have been less than compelling: to date, Vale has produced less than 3,500 documents total. By stark comparison, Rio Tinto has produced ***more than 20 times that number***, including more than 3,400 documents three weeks ago and an additional 4,325 documents today.

Rio Tinto promptly produced its Training Set and has thereafter worked with Vale to make sure its upcoming production adequately addresses any concerns Vale had over Rio Tinto’s underlying training process. Accordingly, Rio Tinto respectfully requests that Vale be ordered to produce its Training Set immediately.

Respectfully submitted,

/s/ Michael J. Lyle  
Michael J. Lyle

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to train the system, including 97 documents coded as responsive to Vale’s “missing topics” in the identified Requests. Rio Tinto nevertheless has agreed to run synthetic documents to address any remaining concerns Vale may have. Moreover, the ongoing dialogue regarding Rio Tinto’s training does not excuse Vale’s failure to produce its Training Set.

<sup>3</sup> Rio Tinto’s concerns are not academic. It already has identified a number of deficiencies in Vale’s Control and Seed Sets – swaths of missing documents concerning, *e.g.*, Vale’s October 18, 2010 presentation regarding Simandou and Vale’s decision to share information with BSGR – and Rio Tinto has no way of knowing whether they have been fixed until Vale produces its Training Set.